

REMARKS/ARGUMENTS

Reconsideration of this patent application is respectfully requested in view of the foregoing amendments, and the following remarks.

The claims are 1, 2, 3 and 12-15. Independent claim 1 has been amended to incorporate the subject matter of allowable claim 11 and claim 10, from which claim 11 depended, to improve its form and to delete drawing reference numerals. Dependent claims 10 and 11 have been cancelled without prejudice. Dependent claim 12 has been amended to depend from claim 1.

Dependent claims 2, 3, 12, 13, 14 and 15 have been amended to delete drawing reference numerals and claim 3 has been further amended to improve its form.

Dependent claims 4-9 have been withdrawn from consideration by the Examiner as being drawn to a non-elected species. Withdrawn claims 4-9 have been amended to delete drawing reference numerals. Withdrawn claims 4 and 5 have been further amended to improve their form, and withdrawn claim 9 has been further amended to depend from dependent claim 4. No new matter has been added.

The Examiner has indicated that the Declaration is defective because it does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be "material to patentability as defined in 37 CFR 1.56." As discussed with the Examiner in a telephone conversation and for the reasons set forth below, Applicant respectfully submits that the executed Declaration filed with the application on May 6, 2005 is acceptable and that a new declaration is not required.

In particular, as set forth in the February 12, 2008 Official Gazette (1327 OG 112, copy attached), for pending applications the Patent Office has waived the express language requirement of 37 CFR 1.63(b)(3), where the oath or declaration was filed prior to June 1, 2008. The express language of 37 CFR 1.63(b)(3) has been waived to the extent necessary such that an oath or declaration containing the "material to examination" or "in accordance with §1.56(a)" language, or both, would be accepted as acknowledging the Applicant's duty to disclose information "material to patentability" as defined in 37 CFR 1.56.

As the subject Declaration was file on May 6, 2005 and recites "material to the examination of this application in

accordance with Title 37, Code of Federal Regulations, §1.56(a)", it is respectfully submitted that the executed Declaration on file is acceptable as acknowledging the Applicant's duty to disclose information material to patentability as defined in 37 CFR 1.56 and that a new Declaration is not required. Applicant accordingly requests confirmation that the Declaration on file is acceptable.

The Examiner has objected to the Specification as not including section headings. The Specification has been amended to provide appropriate section headings. The Specification has been further amended at pages 1, 2 and 3 to delete references to particular claim numbers. No new matter has been introduced.

In view of the foregoing amendments to the Specification, it is believed that the Examiner's objections to the Specification are overcome and Applicant respectfully requests withdrawal of the objections to the Specification.

Claims 1-3 and 13-15 were rejected under 35 USC §102(e) as being anticipated by U.S. Patent No. 6,447,646 to *Hassinen et al.* Claim 10 was rejected under 35 USC §103(a) as being unpatentable over *Hassinen et al.* alone.

Applicant acknowledges with appreciation the Examiner's indication at page 5 of the May 20, 2009 Office Action that claims 11 and 12 would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

Without conceding the propriety of the rejections and in order to expedite prosecution of this application, Applicant has amended independent claim 1 to incorporate the subject matter of allowable claim 11, as well as claim 10 from which claim 11 depended. Dependent claims 10 and 11 have been cancelled without prejudice and dependent claim 12 has been amended to depend from claim 1. Accordingly, Applicant respectfully submits that amended claims 1, 2, 3, and 12-15 are now in condition for allowance.

Dependent claims 4-9 were withdrawn from consideration by the Examiner as being directed to a non-elected species. The withdrawn claims have been amended to delete drawing reference numerals, to improve their form and to make claim 9 dependent from claim 4. As withdrawn claims 4-9 all depend directly or ultimately from independent claim 1, and therefore, include all the features of independent claim 1, as amended, Applicant respectfully requests that withdrawn claims 4-9 be rejoined and submits that claims 4-9 are in condition for allowance as well.

In summary, independent claim 1 has been amended to incorporate the subject matter of allowable claim 11 and claim 10. Dependent claims 2, 3 and 12-15 have been amended. Withdrawn claims 4-9 have also been amended and dependent claims 10 and 11 have been cancelled without prejudice. The Specification has been amended to insert section headings and to remove references to the claims.

In view of the foregoing, it is respectfully submitted that the pending claims, which are claims 1-9 and 12-15 are in condition for allowance. It is respectfully requested that the claims be allowed and that this Application be passed to issue.

Respectfully submitted,
Helmut STRAUCH

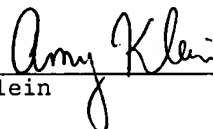


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Enclosure: "Duty of Disclosure Language Set Forth in Oaths or Declarations Filed in Nonprovisional Patent Applications", 1327 OG 112, February 12, 2008.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on July 15, 2009.


Amy Klein

Duty of Disclosure Language Set Forth in Oaths or Declarations Filed in Nonprovisional Patent Applications**Duty of Disclosure Language Set Forth in Oaths or Declarations
Filed in Nonprovisional Patent Applications****Summary:**

The United States Patent and Trademark Office (Office) will no longer accept as complying with 37 CFR 1.63(b)(3) an oath or declaration that does not acknowledge a duty to disclose information material to patentability as defined in 37 CFR 1.56. All oaths or declarations filed on or after June 1, 2008, will be required to include the language expressly set forth in 37 CFR 1.63, including that in 37 CFR 1.63(b)(3). This notice applies to oaths or declarations filed in all nonprovisional patent applications, including reissue applications.

Background:

Current 37 CFR 1.63 sets forth the requirements for an oath or declaration filed in a nonprovisional patent application. 37 CFR 1.63(b)(3) sets forth what the person making the oath or declaration must state when acknowledging the duty of disclosure. Specifically, 37 CFR 1.63(b)(3) requires persons making an oath or declaration to state that they acknowledge their duty to disclose to the Office all information known to the person to be "material to patentability as defined in § 1.56." This language is incorporated in: 37 CFR 1.153, which sets forth the requirements for an oath or declaration in a design application; 37 CFR 1.162, which sets forth the requirements for an oath or declaration in plant patent applications; and 37 CFR 1.175 which sets forth the requirements for an oath or declaration in a reissue application.

In 1992, the Office amended 37 CFR 1.63 to conform to amendments made in 37 CFR 1.56. See Duty of Disclosure, 57 FR 2021 (January 17, 1992) (final rule). The amendments to 37 CFR 1.63(b)(3) resulted in "material to patentability as defined in § 1.56" replacing "material to the examination of the application in accordance with § 1.56(a)." Despite this amendment to 37 CFR 1.63(b)(3), some applicants in their oaths or declarations continue to use "material to the examination of the application" in place of "material to patentability," and "in accordance with § 1.56(a)" in place of "as defined in § 1.56." In response to proper objections made during the examination of pending patent applications, practitioners have argued that the oaths and declarations executed by applicants with the outdated language in question are proper and meet the requirements set forth in 37 CFR 1.63 in view of Comment 38 and the accompanying Reply in the 1992 Final Rule. See Duty of Disclosure at 2027. Additionally, these practitioners have argued that the outdated language should be accepted because the Office has not routinely enforced strict compliance with current 37 CFR 1.63, as evidenced by the number of pending patent applications and issued patents containing oaths or declarations with the outdated "material to examination" and "in accordance with 37 CFR 1.56(a)," language.

Revised Procedure:

With this Notice, the Office is putting applicants and their representatives on notice that compliance with the express language of 37 CFR 1.63 will now be required. Additionally, to the extent the Reply to Comment 38 in the 1992 Final Rule authorized the continued use of the "material to examination" and "in accordance with 37 CFR 1.56(a)," language, this authorization it is hereby rescinded, and reliance on the

Reply to Comments 38 will no longer be accepted. If an oath or declaration filed on or after June 1, 2008, does not include the express language set forth in 37 CFR 1.63(b)(3), the Office will object to the oath or declaration as failing to comply with 37 CFR 1.63. A supplemental oath or declaration pursuant to 37 CFR 1.67 will then be required.

For pending applications, the Office is hereby sua sponte waiving the express language requirement of 37 CFR 1.63(b)(3), where the oath or

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declaration was filed prior to June 1, 2008. The express language of 37 CFR 1.63(b)(3) is waived only to the extent necessary such that an oath or declaration containing the "material to examination" or "in accordance with § 1.56(a)" language, or both, will be accepted as acknowledging the applicant's duty to disclose information "material to patentability" as defined in 37 CFR 1.56.

For continuing applications filed under 37 CFR 1.53(b), other than continuation-in-part applications, the Office will accept an oath or declaration that contains the outdated language if the oath or declaration otherwise complies with 37 CFR 1.63, and either: (1) was filed prior to June 1, 2008; or (2) is being filed in a continuation or divisional application in which a claim for benefit under 35 U.S.C. 120 has been made to a prior-filed copending nonprovisional application, and the oath or declaration is a copy of the previously accepted oath or declaration that was filed prior to June 1, 2008.

For issued patents, the Office is hereby waiving nunc pro tunc the express language requirement of 37 CFR 1.63(b)(3), where the oath or declaration was filed prior to June 1, 2008. As stated above, the express language of 37 CFR 1.63(b)(3) is waived only to the extent necessary such that an oath or declaration containing the "material to examination" or "in accordance with § 1.56(a)" language, or both, will be accepted as acknowledging the applicant's duty to disclose information "material to patentability" as defined in 37 CFR 1.56. Any supplemental oath or declaration filed for an issued patent may simply be placed in the patent application file without review or comment.

While not required, patentees and applicants are free to submit newly executed oaths or declarations with the language expressly set forth in current 37 CFR 1.63(b)(3), in accordance with 37 CFR 1.67.

Applicants are advised that, notwithstanding the waiver in the preceding paragraphs, an applicant who has not disclosed information that is material to patentability as defined in current 37 CFR 1.56, because it was believed that the information was not "material to examination," should disclose such information in order to discharge the applicant's duty of disclosure as required by 37 CFR 1.56, and should file a supplemental oath or declaration acknowledging that duty of disclosure.

Questions about this notice may be directed to the Office of Patent Legal Administration at (571) 272-7701 or electronic mail message to PatentPractice@uspto.gov.

January 22, 2008

JON W. DUDAS
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office